IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1309 OF 2006

Mr. Nandakumar R. Kirti. ... Petitioner.

V/s.

Mr. V.J. Anthony & Ors. ... Respondents.

Mr. Nitin P. Deshpande for the Petitioner.
Mr. Prakash More for the Respondent No.1.
Mr. Rajesh More, A.P.P. for the State.

CORAM : A.S. OKA, J.
DATE : 08TH SEPTEMBER, 2006.

P.C. :

1. Rule. The learned Advocate for the first Respondent waives service. Learned A.P.P. waives service for the second Respondent. Taken up for hearing forthwith.

2. By this Petition under Article 227 of the Constitution of India read with Section 482 of the code of Criminal Procedure, 1973, the Petitioner has taken exception to an order dated 12th April 2006 passed by the learned Additional Sessions Judge, Mumbai in Criminal Revision Application filed by the Petitioner. The first Respondent filed a private complaint alleging commission of offence under Section 406 of the Indian Penal Code and in the alternative under Section 420 of the Indian Penal Code. The learned Metropolitan Magistrate issued process against the Petitioner on the said private complaint under Section 420 of the Indian Penal Code. The challenge in the Revision Application filed by the Petitioner was to the order issuing process.

3. The learned Advocate appearing for the Petitioner submitted that the Revision Application has been disposed of by the learned Additional Sessions Judge without considering the merits of the case. He submitted that the learned Judge has not referred in the averments made in the complaint filed by the first Respondent and has rejected the Revision Application only on the ground that some amount is due and payable by the Petitioner to the first Respondent and that the trial Court had advantage of observing the demeanour of the first Respondent at the time of verification of the complaint. He submitted that the case of the Petitioner was that on plain reading of the complaint, there was no foundation laid for an offence under Section 420 of the said Code.

4. The learned Advocate appearing for the first Respondent supported the impugned order. He submitted that process was issued in the year 2002 and the complaint has not made any progress. He submitted that in the event this Court is inclined to admit the Petition, instead of admitting the Petition, the learned Additional Sessions Judge may be directed to hear and decide the Revision Application afresh.

5. I have considered the submissions. The learned Additional Sessions Judge has finally disposed of the Revision Application by an order which is a very cryptic. The material portion of the said order reads thus:-

> " I have gone through the complaint. The Ld. Trial Court has additional advantage of observing the demeanour of the complainant at the time of verifying the complaint and thereafter it had issued a process / a summons. So, there is no illegality. No interference is called for."

5. On plain reading of the order, it is apparent that the merits of the case made out by the Petitioner have not been considered by the learned Additional Sessions Judge. He has not even referred to the assertions made in the complaint filed by the first Respondent. He has observed that the Petitioner has admitted that some payment is due and outstanding by him. That itself is no ground to come to the conclusion that there is a prima facie case made out under Section 420 of the Code.

6. In my view, the Revision Application has been disposed of in most unsatisfactory manner and therefore, the same deserves to be remanded to the Sessions Court. Hence, I pass the following order :-

(a) The impugned Judgment and Order dated 12th April 2006 is quashed and set aside and Criminal Revision Application No.1456 of 2005 is restored to the file. The interim order, if any, which was operative during the pendency of the Revision Application is also restored.

(b) The parties are directed to appear before the learned Sessions Judge at Mumbai on 9th October 2006 at 11.00 a.m.

(c) The learned Sessions Judge may himself hear the Revision Application or may assign it to any other Court as per his administrative convenience.

(d) The Sessions Court will decide the Revision Application on its own merits as expeditiously as possible and preferably on or before 31st March 2007.

(e) All contentions of the parties on merits of the Revision Application are kept open.

(f) Office to issue writ of this order immediately to the Sessions Court.

JUDGE